

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF NEW YORK

In re

PATRICK HACKETT HARDWARE COMPANY, d/b/a
WISEBUYS STORES, d/b/a HACKETTS,

Debtor.

Chapter 11
Case No. 09-63135-6

**OBJECTION BY KEYBANK NATIONAL ASSOCIATION TO DEBTOR'S
DISCLOSURE STATEMENT**

KeyBank National Association ("KeyBank") by its attorneys Nolan & Heller, LLP, states as follows as its objection to the proposed Disclosure Statement of Patrick Hackett Hardware Company ("Debtor").

1. The Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Northern District of New York (the "Bankruptcy Court") on November 10, 2009.

2. KeyBank is a national banking association with a place of business located at 66 South Pearl Street, Albany, New York.

3. The Debtor is indebted to KeyBank pursuant to the terms of that certain Consolidated Promissory Note dated June 11, 1998 in the original principal amount of \$1,400,000.00 (the "Note") executed and delivered by Debtor to KeyBank.

4. As security for the repayment of the Note, on or about June 11, 1998, Debtor executed in favor of, and delivered to KeyBank, a certain Mortgage and Security Agreement (the "Mortgage"), which granted KeyBank a security interest in, *inter alia*, certain real property owned by the Debtor located in the City of Ogdensburg, County of St. Lawrence, State of New York as more particularly

described in the Mortgage. In addition, the Debtor pledged to KeyBank all improvements situate thereon along with "all fixtures, furnishings, machinery and equipment, chattels and articles of personal property now or hereafter attached to or used in connection with the Premises, together with any and all replacements thereof and additions thereto. The Debtor further granted KeyBank an Assignment of Rents and Leases with respect to the Property. The Note and Mortgage and Assignment of Rents are collectively referred to as the "Loan Documents".

5. As of the filing date of the petition, the principal amount due and owing under the Loan Documents was \$422,953.44, plus accruing interest at the rate of \$54.07136 per diem, plus accrued costs and fees arising from KeyBank's enforcement of its rights under the Loan Documents.

6. The Debtor filed its Disclosure Statement and Plan on June 21, 2010 and proposed certain treatment of KeyBank's claim under the Plan. Subsequently, the debtor filed an Amended Disclosure Statement and Amended Plan of reorganization, both dated October 13, 2010. As set forth more fully herein, KeyBank hereby objects to the Debtor's Amended Disclosure Statement as it does not contain adequate information sufficient for a hypothetical investor to make an informed decision regarding the Debtor's proposed Plan as required pursuant to 11 U.S.C. §1125(b). Specifically, KeyBank objects to the Amended Disclosure Statement because the budget projections uniformly show substantial monthly losses during approximately three-quarters of the plan term, the Amended Disclosure Statement discusses the potential sale of certain real property owned by the Debtor in Ogdensburg, but does not disclose if such property is subject to KeyBank's mortgage. The Amended Disclosure Statement also discusses certain investments or the offering of securities by The Debtor's sole shareholder, Wisebuys, Inc. and/or Seaway Valley Capital Corp., but there is no discussion of investments, infusions of capital or loans from the shareholders to the Debtor to

effectuate the plan. Similarly, the projections accompanying the Amended Disclosure Statement do not reflect any such investments from Wisebuys, Inc. or Seaway Valley Capital Corp. Accordingly, it is respectfully submitted that approval of the Debtor's Disclosure Statement should be denied in its present form.

7. While the Amended Disclosure Statement includes revised projections for income and expenses, those projections show losses for the first six months of every year. As a result the Debtor's plan appears to anticipate defaults to some creditors during those months. The projections also appear to be based on assumptions of income and expenses that are vastly different from the projections from only three months earlier, when the first Disclosure Statement was filed. Thus, KeyBank is concerned that the financial information is less about projections and more about unsupported hope.

8. Finally, KeyBank objects to the Plan's proposed amortization term of 155 years for its secured claim based upon the fact that the KeyBank mortgage originated on June 11, 1998 and matured on August 1, 2008. Thus, the proposed amortization term would effectively stretch the term of the loan to 27 years; substantially longer than conventional and market terms for commercial mortgages. It is respectfully submitted that such an extended payout is patently unfair and unreasonable, particularly in light of the proposed 6.50% interest rate, which fails to adequately compensate KeyBank for the risk of loss inherent in the case of such an extended amortization term.

9. KeyBank recognizes that several of the objections raised herein are more appropriately treated as objections to confirmation of the Amended Plan rather than objections to the Amended Disclosure Statement. However, it should be noted that the objections raised to the Amended Disclosure Statement are substantial and material and it has been held that where a

proposed plan is unconfirmable on its face that denial of the disclosure statement is appropriate. See, In re Silberkraus, 253 BR 890, 899 (Bankr. C.D. Cal. 2000), *aff'd* 336 F.3d 864, 871 (9th Cir. 2003).

WHEREFORE, KeyBank respectfully requests that the Court deny approval of the Debtor's proposed Amended Disclosure Statement on the grounds that it does not contain adequate information such that creditors can make an informed decision regarding the Debtor's Amended Plan as required pursuant to 11 U.S.C. §1125(b) and that the Court grant such other and further relief as the Court may deem appropriate.

Dated: October 27, 2010
Albany, New York

NOLAN & HELLER, LLP

A handwritten signature in black ink, appearing to read "Francis J. Brennan", is written over a horizontal line.

Francis J. Brennan, Esq.

Attorneys for KeyBank National Association
39 North Pearl Street, 3rd Floor
Albany, New York 12207
(518) 449-3300